

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

vs.

JAMES DAVIS RISHER

CASE NUMBER:

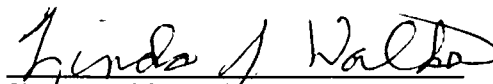
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I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief. From in or about early 2007 through and including in or about July 2010, in Polk County, in the Middle District of Florida, and elsewhere, defendant did commit the following federal offenses:

conspiracy to commit mail fraud and wire fraud, mail fraud, wire fraud, and money laundering, in violation of Title 18, United States Code, Sections 1349, 1341, 1343, 1956, 1957, and 2. I further state that I am a Postal Inspector with the United States Postal Inspection Service, and that this Complaint is based on the following facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No



Signature of Complainant
Linda J. Walker, Postal Inspector
U.S. Postal Inspection Service

Sworn to before me and subscribed in my presence,

~~31~~
May 30, 2011

at

Tampa, Florida

THOMAS B. McCOUN, III
United States Magistrate Judge
Name & Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Linda Walker, Postal Inspector with the United States Postal Inspection Service, do swear as follows:

1. I am employed by the United States Postal Inspection Service at Tampa, Florida, and have been so employed for the past sixteen (16) years. I am currently assigned to the Mail Fraud Team and investigate violations of the mail fraud statute. I have attended Financial Investigations Training, and have given presentations related to mail fraud to consumer groups, other law enforcement agencies, and professional groups for approximately eleven (11) years. I have provided training related to mail fraud, to include the following: Certified Fraud Examiners Seminar (2009), Financial Crime Investigators Class - St Petersburg College (2009), 6th Annual Fraud & Computer Crimes Seminar (2005), and the North American Consumer Protection Investigators Conference (2005).

2. The investigation into this matter is a joint effort between the United States Postal Inspection Service ("USPIS"), the Federal Bureau of Investigation ("FBI"), the Florida Department of Law Enforcement ("FDLE"), the Internal Revenue Service-Criminal Investigation ("IRS-CI"), and the State of Florida Office of Financial Regulation ("OFR"). The facts and information contained herein are based on the personal knowledge of your affiant gained during this investigation, as well as information provided to your affiant by agents and investigators from participating agencies. During this investigation, your affiant and agents and investigators from USPIS, FBI, IRS-CI, FDLE, and OFR have conducted multiple interviews and reviewed pertinent documents.

3. This affidavit is made for the purpose of supplying probable cause to support a Criminal Complaint against James Davis Risher. I have personally participated in the investigation of offenses described herein. Because this affidavit is made for the sole purpose of providing probable cause to support a Criminal Complaint against James Davis Risher, I have not included every detail of every aspect of the investigation in this affidavit. Rather, I have set forth facts that are necessary to establish probable cause to believe that James Davis Risher is in violation of multiple federal statutes under Title 18, United States Code.

4. Based on the information contained in this affidavit, probable cause exists to believe that James Davis Risher has committed the following federal offenses: conspiracy to commit mail fraud and wire fraud, in violation of 18 U.S.C. § 1349, mail fraud, in violation of 18 U.S.C. § 1341, wire fraud, in violation of 18 U.S.C. § 1343, and money laundering, in violation of 18 U.S.C. §§ 1956 and/or 1957.

I. OVERVIEW OF INVESTIGATION

5. From in or about early 2007 to at least in or about July 2010, James Davis Risher ("Risher") and Daniel J. Sebastian ("Sebastian") did knowingly and willfully solicit funds from multiple investors to invest in a private equity fund. Investors were provided promotional materials showing previous annual returns ranging from 14.62 to 89.11 percent. Risher and Sebastian received funds from investors via wire and U.S. mail. Quarterly statements were sent to investors via U.S. mail. Based upon the investigation to date, it appears that the difference between the approximately \$20 million in investor funds received and the approximately \$4 million in distributions paid out, that is,

approximately \$16 million, was diverted by Risher and/or Sebastian and used for their personal enrichment. Investors were fraudulently advised that their deposits were held at Penson Financial Services, Inc. ("Penson") in an account titled "The Preservation of Principal Fund." However, records show that only approximately \$5 million of investors' funds were ever transferred to any Penson account. As of this date, there are no funds in any Penson account that has been identified as affiliated with Risher or Sebastian during the course of this investigation.

II. INVESTIGATION

6. Risher and Sebastian became acquainted in the spring of 2006. On an unknown date, but beginning at least as early as in or about 2007, Risher and Sebastian came to a mutual understanding to work together to solicit individuals to invest funds with companies they managed, namely Jade Asset Group, LLC, Managed Capital, LLC, and Safe Harbor Investments. Sebastian marketed investment opportunities to existing and potential clients, and Risher purported to have conducted trades using the investors' funds.

7. From the time Risher and Sebastian became acquainted through in or about August 2010, Sebastian operated an office in Lakeland, Florida, and his office assistant was Roseann Swallow. Throughout this period, Sebastian frequently met with prospective investors in his office. There is no evidence Risher maintained an office location during this period. Risher did and/or does maintain multiple residences in the Ft. Myers, Florida and Mars Hill, North Carolina areas.

8. Beginning at least as early as in or about 2007 and continuing through in or about July 2010, in connection with his partnership with Risher, Sebastian marketed investment opportunities under the name Safe Harbor Investments. Sebastian also used the name Safe Haven at times. Sebastian usually provided potential investors with printed marketing materials, which materials included biographies of Risher and Sebastian, descriptions of various investment opportunities, and frequently asked questions and answers. The investment opportunities varied according to the amount of money invested and the reported risk. Regardless of the investment opportunity, the fees were described as "the industry standard" – either 2 or 2.5 percent of assets under management, plus 20 percent of profits.

9. As an enticement to invest, Sebastian told clients if they invested, their funds would be guaranteed as evidenced by a "Guarantee of Principal Document." As detailed in paragraph 13 below, Sebastian's assistant, Roseann Swallow, provided several documents to agents, including, but not limited to, a "Guarantee of Principal Document." Agents have also received copies of "Guarantee of Principal Document[s]" from several investors.

10. Agents have also interviewed investors. For example, on September 21, 2010, agents interviewed investor Beverly Griffiths. Ms. Griffiths stated that before she invested her money, Sebastian guaranteed that her principal was safe. On October 4, 2010, agents interviewed investor Robert Bishop. Mr. Bishop said Sebastian sent him a packet of information via the mail. Mr. Bishop said the packet included documents dated February 27, 2008, titled "Guarantee of Principal Agreement."

11. Typically, once a client decided to invest, he sent his funds via check to Sebastian. During an interview on September 1, 2010, Ms. Swallow told agents that she usually took care of depositing or otherwise handling the investment checks. Specifically, Ms. Swallow reported she either deposited the investors' checks into an account at Wachovia Bank in the name of Jade Asset Group, LLC, controlled by Risher, or sent the checks to Risher via FedEx. Ms. Swallow said that on occasion, clients wired their investment funds directly into Risher's Jade Asset Group bank account.

12. Risher was a signatory on numerous bank accounts. To date, investigators have identified and analyzed 24 bank accounts affiliated with Risher during the years 2006 through 2010. Several bank accounts at Bank of America, Wachovia Bank, and Regions Bank are titled Jade Asset Group, LLC, Capital Trading Partners, LLC, or Managed Capital, LLC. Risher and/or his wife also maintained several personal bank accounts at Wachovia Bank and Regions Bank. Bank records show that investors' funds were deposited into and/or passed through all of these bank accounts.

13. On September 1, 2010, agents interviewed Sebastian's office assistant Roseann Swallow. Swallow provided agents with two DVDs containing documents concerning Risher, Sebastian, Safe Harbor, and the client-investors. The documents include, but are not limited to, materials provided to potential investors, that is, biographies of Risher and Sebastian, descriptions of various investment opportunities, frequently asked questions and answers, the Guarantee of Principal Document, and a "Confirmation of Funds" document. The documents also include "Quarterly Fees" spreadsheets, which purport to reflect, among other things: (1) the current balance of

each client's investment(s); (2) the amount of growth (profit) for the quarter; (3) the amount of the management fee (set at 2 or 2.5 percent) for the quarter; and (4) the amount of the fee based on 20 percent of the amount of quarterly growth (profit).

14. As noted in paragraph 8 above, the fees were described to clients as "the industry standard" – either 2 or 2.5 percent of assets under management, plus 20 percent of profits. Examination of the "Quarterly Fees" spreadsheets reveals the fee, which was supposed to have been based on 20 percent of the amount of quarterly growth (profit), was actually based on 20 percent or, in some instances, more of the total assets under management. In other words, both the client's principal and growth were assessed not just a 2 or 2.5 percent fee, but also a 20 percent or greater fee, each quarter.

15. According to Ms. Swallow and various investors, she and Sebastian handled the majority of the communications with investors. Many of the communications were via e-mail.

16. Such communications also included mailing to each investor a quarterly account statement, which purported to report the status of the investor's account. Ms. Swallow stated that each quarter, Risher reported the amount of the quarterly growth to Sebastian via email, text, or phone. The growth amounts reported by Risher were entered into a spreadsheet, a copy of which Ms. Swallow provided to agents. According to Ms. Swallow, Sebastian provided her with the quarterly growth figures, reported by Risher, to use to prepare the quarterly account statements. The account statements never reflected any loss.

17. The "frequently asked questions" document provided to clients advised that their investment funds would be held in an account titled "The Preservation of Principal Fund" at Penson Financial Services, Inc. (Penson), a registered clearinghouse located in Dallas, Texas. The "frequently asked questions" document further stated that all trades would be cleared through Penson.

18. Investigators have obtained and reviewed records of Penson accounts affiliated with Risher and/or Sebastian. These records show a minimal amount of investors' funds (less than \$5 million) were actually deposited with Penson. Additionally, Penson documents show no account listed in the name of "The Preservation of Principal Fund."

19. The "frequently asked questions" document provided to investors also advised that "the normal retention period for all new accounts is, typically, one year." Ms. Swallow stated that an investor was permitted to request a distribution from his account each quarter after the first year, if he requested the distribution in writing at least 45 days in advance. Effective 2010, distributions were made only three times each year – January 15, May 15, and September 15.

20. Ms. Swallow told agents that Sebastian would advise Risher how much money was needed to make requested distributions each period. In response, Risher would wire funds to a Bank of America account titled "Preservation of Principal, LLC" for which Sebastian and Ms. Swallow were signatories. Ms. Swallow wrote distribution checks against this account and mailed them to the investors who had requested the distributions. According to Ms. Swallow, clients invested approximately \$20 million with

Sebastian and Risher, but only about \$4 million was paid out to investors in distributions. On or about October 5, 2010, Ms. Swallow was removed as a signatory for the account.

21. Bank records show that approximately \$16 million in investors' funds was diverted by Risher and/or Sebastian for their personal enrichment. An analysis of Risher's personal bank accounts at Wachovia Bank and Regions Bank establishes that he has spent millions of dollars per year on personal residences, real estate, vehicles, artwork, and other personal effects. Sebastian has also spent millions of dollars on residences and other personal items. For example:

a. Records produced by Ray Fenton of Fenton Architect Associates show that the Rishers hired Fenton as the architect and Benchmark Contractors as the builder to remodel and construct a \$1.4 million addition to a Risher-owned home;

b. Duane McQuillen, a builder in Lakeland, Florida, told agents during a September 9, 2010 interview, that Sebastian had been living in a home he built since December 2008. Mr. McQuillen said that he had a contract with Sebastian for the sale of the home in the amount of \$499,000, and that Risher had been making quarterly payments of \$75,000 toward the purchase of the home to Mr. McQuillen on behalf of Sebastian; and

c. On October 25, 2010, Ms. Swallow provided agents with a spreadsheet called "Investment Transactions" for Evergreen Enterprises, which Ms. Swallow explained showed the funds credited and distributed to, or on behalf of, Sebastian. The spreadsheet shows, among other things, payments to Homes Realty

totaling approximately \$150,000. On October 27, 2010, Ms. Swallow told agents that the Homes Realty entry referred to a condominium Sebastian was purchasing in Panama. Ms. Swallow added that the spreadsheet did not display a home Sebastian was purchasing in North Carolina.

22. A distribution was scheduled to be made to investors on September 15, 2010, but was not made. On October 5, 2010, agents interviewed a real estate agent with Remax Realty named Steve Fisher. Mr. Fisher advised that in mid-September 2010, Risher sold a vacant lot that he owned in Fort Myers, Florida and received approximately \$132,000 in sale proceeds. After the sale of this property, Risher made distributions to a handful of investors in roughly the same amount as he made on the sale of the vacant lot.

23. Agents contacted two additional realtors in the Fort Myers, Florida area and learned that Risher attempted to sell several vacant lots and properties he owned with "an urgency." For example, agents learned that Risher had the vacant lot referenced in paragraph 22 above listed with two different real estate agents, Steve Fisher and Robert Zimmer of the Zimmer Group, LLC. Agents interviewed Mr. Zimmer on October 6, 2010. Mr. Zimmer stated that Risher phoned him to list the vacant lot and stated he needed to sell the lot in order to raise capital.

24. Risher has a criminal history dating back to the early 1990s for fraud. In particular, in October, November, and December of 1990, Risher pleaded guilty to multiple counts of "theft by taking" as well as multiple counts of violating Georgia's securities act in the state of Georgia. He was sentenced to terms of imprisonment. On

February 6, 1997, Risher pleaded guilty to one count of mail fraud, one count of securities fraud, and two counts of money laundering in the Middle District of Florida, Ft. Myers Division. On April 18, 1997, Risher was sentenced to 92 months of imprisonment, followed by three years of supervised release, and was ordered to pay \$693,623.13 in restitution to the victims. None of Risher's criminal history was included in the biography of Risher provided to investors.

25. In May 2011, Jane Wallin spoke with Risher briefly by telephone. Mrs. Wallin and her husband build homes in Wolf Laurel Resort, Mars Hill, North Carolina, where Risher maintains one of his residences. Thereafter, Mrs. Wallin reported this conversation to agents. According to Mrs. Wallin, Risher asked her if the IRS had been in touch with her. Mrs. Wallin responded yes, she had spoken with the IRS. In response, Mrs. Wallin reported, Risher was very quiet for a moment and then ended the conversation. Having received Mrs. Wallin's report, agents requested that Immigration and Customs Enforcement ("ICE") put a watch in place to notify agents if Risher scheduled travel outside the country.

26. On or about May 20, 2011, investors Steve and Pat Cook met with Risher at his residence located in Sanibel, Florida. Agents spoke with Mrs. Cook after the meeting. Mrs. Cook stated that she and her husband met with Risher to discuss getting the money back that they had invested with Sebastian and Risher. Mrs. Cook told agents that they felt Risher had put them off and offered many excuses why they had not yet received the money they had invested. Mrs. Cook further stated that she and her husband told Risher that they had friends in law enforcement and mentioned

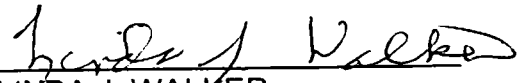
Assistant United States Attorney Rachelle DesVaux Bedke by name. (It is your affiant's understanding that the Cooks became aware of the federal investigation and AUSA Bedke's assignment to this matter from a source outside the government. AUSA Bedke had no contact with the Cooks prior to their May 20, 2011, meeting with Risher.) Mrs. Cook stated that Risher's "jaw dropped" in response. Risher assured the Cooks that they would receive their money.

27. On or about Sunday, May 29, 2011, ICE notified agents that Risher is scheduled to fly from Charlotte, North Carolina to Bermuda on the morning of Tuesday, May 31, 2011. Risher is reportedly traveling alone. Risher is known to have or have had a bank account in Bermuda based on analysis of his bank records in conjunction with this investigation.

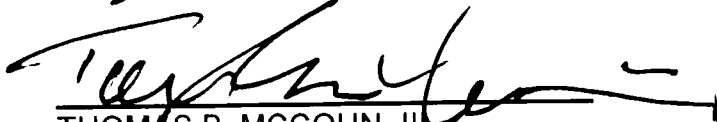
III. CONCLUSION

28. Based on the above facts and circumstances, probable cause exists to believe that James Davis Risher has committed the following federal offenses: conspiracy to commit mail fraud and wire fraud, in violation of 18 U.S.C. § 1349, mail fraud, in violation of 18 U.S.C. § 1341, wire fraud, in violation of 18 U.S.C. § 1343, and money laundering, in violation of 18 U.S.C. §§ 1956 and/or 1957. James Davis Risher is also thought to be a flight risk due to his extensive criminal history involving investment fraud, the fact that he is traveling alone to Bermuda, and the fact that the investigation revealed a bank account controlled by Risher in Bermuda.

This completes my affidavit.


LINDA J. WALKER
Postal Inspector
United States Postal Inspection Service

Sworn to and subscribed before me
this 31 day of May, 2011.


THOMAS B. MCCOUN, II
United States Magistrate Judge